

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
**FILED**

SEP 25 2008

CLERK, U.S. DISTRICT COURT  
Deputy

### FACTUAL RÉSUMÉ

UNITED STATES OF AMERICA v. DAVID LAWRENCE SMITH  
NO. 5:08-CR-035-C - LUBBOCK DIVISION - NORTHERN DISTRICT OF TEXAS

INDICTMENT:

TO BE ARRAIGNED ON COUNT ONE OF THE INDICTMENT - Charging a violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2) - Convicted Felon in Possession of a Firearm.

MAXIMUM PENALTY: A term of imprisonment of not more than ten (10) years, a fine of not more than \$250,000.00, or both. A term of supervised release of not more than 3 years, which may be mandatory under the law and will follow any term of imprisonment. If the defendant violates the conditions of supervised release, he could be imprisoned and subject to additional terms of supervised release and imprisonment as determined by the Court in accordance with law.

MANDATORY

ASSESSMENT:

\$100.00

PLEA AGREEMENT: As set forth in the Plea Agreement letter attached hereto and incorporated herein.

ELEMENTS OF

THE OFFENSE:

1. The defendant knowingly possessed a firearm, as charged;
2. That before the defendant possessed the firearm, the defendant had been convicted in a court of a crime punishable by imprisonment for a term in excess of one year, that is, a felony offense; and
3. That the possession of the firearm was in or affecting commerce; that is, that before the defendant possessed the firearm, it had traveled at some time from one state or foreign country to another.

**FACTS:**

On or about February 11, 2008, in the Lubbock Division of the Northern District of Texas, and elsewhere, David Lawrence Smith, defendant, who had previously been convicted of a crime punishable by a term of imprisonment exceeding one year, did knowingly possess in and affecting interstate and foreign commerce a firearm, to wit: a Turkish, 7.9 caliber bolt-action rifle, serial number 195018.

On February 11, 2008, while executing a search warrant at Smith's residence, 2109 29<sup>th</sup> St., Lubbock, Texas, Lubbock police officers discovered the following: fifteen tubes containing live marijuana plants, six containers with live marijuana plants, hydrogrow light power supply, an exhaust fan with attached hose, a Turkish, 7.9 caliber bolt-action rifle, serial number 195018, and 35 rounds of 7.9 caliber ammunition. Smith admits that he knowingly possessed the aforementioned firearm.

Further investigation revealed that before Smith possessed the firearm he had been convicted in a court of a crime punishable by imprisonment for a term in excess of one year, that is, a felony offense. Specifically, on October 6, 2005, in the 364th Judicial District Court of Lubbock County, Texas, case number 2005-408956, Smith was convicted of Evading Arrest / Detention with a Vehicle.

The Turkish, 7.9 caliber bolt-action rifle, serial number 195018 was subsequently examined by a special agent of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”). The agent determined that this firearm functioned as designed. That same ATF special agent, who is an expert in the interstate commerce of firearms, determined that this firearm was not manufactured in the State of Texas and, therefore, must have affected interstate commerce because it must have traveled at some time from another state to Texas.

The above facts are true and correct:

David Smith  
David Lawrence Smith  
Defendant

9/22/08  
Date

Sheri Kime-Goodwin  
Sheri Kime-Goodwin  
Attorney for Defendant

9/22/08  
Date